



Legal Services Division
Australian Communications & Media Authority
PO Box 78
Belconnen ACT 2816

23 December 2021

Re: Proposal to Remake the Telecommunications (Infringement Notices) Guidelines 2011

Dear Sir/Madam,

I am writing to provide you with Twilio's comments on the proposal to remake the Telecommunications (Infringement Notices) Guidelines 2011.

As a leading global Communications Platform as a Service (**CPaaS**) provider, Twilio provides services to more than 235,000 enterprises globally and powers more than 1 trillion interactions between them and their customers every year. Twilio's software allows enterprises to communicate with their customers over voice, SMS, messaging or email thanks to the communication features that enterprises have added into applications across a range of industries, from financial services and retail to healthcare and non-profits. For instance, Twilio powers the communications for New York City's contact tracing initiative. The service enables city authorities to communicate with COVID-19 patients, educate them on the virus and identify their close contacts through self-reporting. The platform also provides messaging-based alerts using Voice, SMS, email or WhatsApp that prompt patients to fill out secure surveys on their symptoms.

In Australia Twilio serves a number of global customers as well as a number of large Australian financial institutions and Government organisations. Many of Twilio's customers are also small and medium-sized enterprises. Twilio's non-profit arm, [Twilio.org](https://www.twilio.org), supports charitable organizations to deliver their communications needs.

As outlined in the consultation document, most of the proposed amendments to the 2011 Guidelines are minor and technical and do not require comment.

However there are a number of more substantive amendments which Twilio wishes to comment on. These are set out below:

New clause 9.2 (d). Clause 9.2 deals with the circumstances where it would not be appropriate to issue an infringement notice - previously clause 6.2 of the 2011 Guidelines. Twilio notes that clause 6.2 (d) reads "the recipient's conduct is the subject of other compliance or enforcement action by the ACMA" is to be replaced by clause 9.2 (d) which reads "the conduct should more properly be the subject of other compliance or enforcement



action by the ACMA because, for example, it is not serious enough to warrant the issue of an infringement notice or because it is too serious to be adequately dealt with by an infringement notice.”

Twilio supports this expanded wording which provides more information on the factors that ACMA will take into account when deciding whether or not to issue an infringement notice.

New clause 9.16 - Clause 9.16 deals with ACMA’s general approach to publication of infringement notices - previously clause 6.15 of the 2011 Guidelines. Twilio believes that there has been a clear change of emphasis between clause 6.15 (c) which read “publication of the fact that an identified person has complied with an infringement notice may be appropriate” to 9.15 (c) “it will publicise an outcome where a person has paid the penalty specified in an infringement notice given by the ACMA.”

Twilio notes that the amended wording is in line with the position outlined in ACMA’s Regulatory Guide no 6 - Publication of investigations and enforcement actions where it says “ACMA will publicise an outcome where a person has paid the penalty specified in an infringement notice given by the ACMA (see too Regulatory guide—No 5: Infringement notices).”

However, the guidance should not dictate the law and Twilio queries whether it is necessary for ACMA to completely remove its discretion on this matter in the infringement guidelines itself. Twilio suggests that there may indeed be circumstances where it might not be appropriate to publish the fact that a party had paid the penalty in the infringement notice.

Twilio also supports the inclusion of clause 9.4 which makes it clear in line with s572E (2) of the Act that an infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.

Please do not hesitate to contact me if you have any further questions or require any additional information..

Yours sincerely,

Donald Connor

Donald Connor

Senior Director, Telecommunications Regulatory Compliance

